

**Remarks**

This Application has been carefully reviewed in light of the Final Office Action mailed September 27, 2007. Although Applicants believe all claims are allowable without amendment, Applicants have made clarifying amendments to Claims 1, 24, and 38. None of these amendments is considered narrowing or necessary for patentability. Applicants respectfully request reconsideration and allowance of all pending claims.

**I. The Claims are Definite**

The Examiner rejects Claims 1-18 and 24-38 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Examiner states that Claims 1-18 and 24-38 recite both a “work item” and a “work assignment,” that Applicants have argued that the “work item” is distinguishable from the “work assignment,” and that it is unclear (to the Examiner) from these arguments and this recitation in the claims what exactly the Applicant is claiming using the term “work assignment.” (Final Office Action at 11) According to the Examiner, Applicants appear to be claiming “work assignment” to mean the work being assigned; however, according to the Examiner, Applicants are arguing this term as something else in the remarks. (*Id.*) Applicants traverse these rejections.

The essential inquiry pertaining to the definiteness requirement is whether the claims set out and circumscribe subject matter with a reasonable degree of clarity and particularity. Definiteness of claim language must be analyzed, not in a vacuum, but in light of: (a) the content of the particular application disclosure; (b) the teachings of the prior art; and (c) the claim interpretation that would be given by one possessing ordinary skill in the art at the time the invention was made. M.P.E.P. ch. 2173.02. Furthermore, the test for indefiniteness under Section 112, second paragraph, is *whether “those skilled in the art would understand what is claimed when the claim is read in light of the specification.”* M.P.E.P. ch. 2173.02 (citing *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1576 (Fed. Cir. 1986)) (emphasis added).

Claim 1, which Applicants discuss as an example, recites both a “work assignment” and a “work item.” In particular, Claim 1 recites that a dispatcher is operable to “automatically determine if any of [a] plurality of [received] messages is associated with a work assignment,” and that an active work server is operable to “receive work information associated with at least one message determined automatically by the dispatcher to be associated with a work assignment” and “automatically create, in response to receiving the work information associated with at least one message determined by the dispatcher to be associated with a work assignment, a work item associated with the at least one message.”

First, Applicants respectfully submit that the claim limitations “work assignment” and “work item” are clearly distinguishable because they are different terms in the same claim set. These claim terms necessarily have different definitions. According to the plain language of the claim, the work item is created “in response to receiving the work information associated with at least one message determined by the dispatcher to be associated with a work assignment.” Therefore, the “work item” is not even created until a message associated with a work assignment has been determined by the dispatcher to be associated with the work assignment, and until that message has been received by the active work server. Thus, the work item cannot refer to the exact same thing as the work assignment.

Second, Applicants respectfully direct the Examiner’s attention to at least Page 6, Lines 9-20; Page 8, Lines 25 through Page 9, Line 15; and Page 12, Lines 4 through Page 13, Line 11 of the Specification, which provide an example description of a “work assignment.”<sup>1</sup> The Specification provides examples of work assignments in a call center environment at Page 12, Lines 13-24. While a work item may include a work assignment (*see, e.g.*, Specification, Page 16, Lines 16-18), the work item is something that is created based on work information associated with at least one message determined by the dispatcher to be associated with a work assignment.

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<sup>1</sup> Although Applicants refer to descriptions in the Specification when discussing “work assignment” and “work item,” these descriptions are for example purposes only and should not be used to limit the claims. The standard for indefiniteness simply states that the claims must be clear to one of ordinary skill in the art in light of the specification. Applicants are simply referring to the Specification to demonstrate that Applicants claims comply with this standard.

Additionally, Applicants respectfully direct the Examiner's attention to at least Page 6, Lines 9-20; Page 9, Line 4 through Page 10, Line 31; Page 12, Lines 4-12; Page 12, Line 25 through Page 13, Lines 27; Page 14, Line 9 through Page 16, Line 4; and Page 16, Line 25 through Page 17, Line 5 of the Specification, which provide an example description of a "work item." Moreover, Applicants devoted an entire figure (FIGURE 2) to describing an example format of an example work item. The "work item" is an electronic, physical thing that is created based on work information associated with at least one message determined by the dispatcher to be associated with a work assignment.

In light of the plain language of Applicants' claims, and further in light of Applicants' Specification, Applicants respectfully submit that *"those skilled in the art would understand what is claimed when the claim is read in light of the specification."* M.P.E.P. ch. 2173.02 (citing *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1576 (Fed. Cir. 1986)) (emphasis added).

For at least these reasons, Applicants respectfully submit that Claims 1-18 and 24-38 comply with 35 U.S. C. § 112, second paragraph. Thus, Applicants respectfully request reconsideration and allowance of these claims.

## **II. The Claims are Allowable Under 35 U.S.C. § 103(a)**

### **A. Independent Claims 1 and 24 and Their Dependent Claims are Allowable over *Northcutt***

The Examiner rejects Claims 1-11 and 24-34 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2003/0126001 by Northcutt et al. ("*Northcutt*"). Applicants respectfully traverse these rejections.<sup>2</sup>

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<sup>2</sup> Applicants reiterate their belief that they could antedate *Northcutt* based at least on Applicants' date of conception prior to December 28, 2001 (the filing date of *Northcutt*) and subsequent diligence up to the February 8, 2002 filing date of the Application. While Applicants have chosen not to do so in the present Response due to the clear distinctions between Applicants' independent claims and *Northcutt*, Applicants reserve the right to antedate *Northcutt* in a future Response or on Appeal, if appropriate. By not antedating *Northcutt* at this time, Applicants do not concede that *Northcutt* qualifies as prior art.

At a minimum, *Northcutt* fails to disclose, teach, or suggest the following limitations recited in Claim 1, as amended:

- a dispatcher operable to . . . automatically determine if any of the plurality of [received] messages is associated with a work assignment; and
- an active work server . . . operable to:
  - receive work information associated with at least one message determined automatically by the dispatcher to be associated with a work assignment;
  - automatically create, in response to receiving the work information associated with at least one message determined by the dispatcher to be associated with a work assignment, a work item associated with the at least one message based at least in part upon the work information associated with at least one message determined by the dispatcher to be associated with a work assignment, wherein the work item comprises an owner identifier; and
  - automatically communicate the work item to an owner associated with the owner identifier.

For example, *Northcutt* fails to disclose, teach, or suggest an active work server that is operable to “automatically create, in response to receiving the work information associated with at least one message determined by the dispatcher to be associated with a work assignment, a work item associated with the at least one message based at least in part upon the work information associated with at least one message determined by the dispatcher to be associated with a work assignment, wherein the work item comprises an owner identifier” as recited in Claim 1 as amended.

The Examiner continues to cite paragraph 65 of *Northcutt* as allegedly disclosing these limitations, particularly referencing *Northcutt's* disclosure that “a manager assigns the work item to a person responsible to complete the work assignment.” (See Final Office Action at 3) Assuming for the sake of argument that the Examiner's characterization of *Northcutt* is accurate, a manager manually assigning a received request for service to responsible information technology personnel (See *Northcutt*, ¶ 65) does not disclose, teach, or suggest an active work server that is operable to “receive work information associated with at least one message determined by [a] dispatcher to be associated with a work assignment” and to “automatically create, in response to receiving the work information associated with at least one message determined by the dispatcher to be associated with a work assignment, a

work item associated with the at least one message based at least in part upon the work information associated with at least one message determined by the dispatcher to be associated with a work assignment, wherein the [created] work item comprises an owner identifier," as recited in Claim 1.

*Northcutt* also discloses that through general reports module 214, a user may select a link to display a listing of all unassigned requests for service. According to *Northcutt*, through this link, the system presents a list of requests for service (e.g., all RFS's) for which no information technology personnel has yet been assigned. (*Northcutt*, ¶ 0058) This portion of *Northcutt* appears to confirm that RFSs in *Northcutt*'s system are received and simply sit idle until a manager manually reviews and assigns them to information technology personnel.

Applicants also reiterate that the cited portions of *Northcutt* fail to disclose, teach, or suggest a distinct work item that comprises an owner identifier indicating an owner of the work item. Applicants again distinguish between the "work assignment" and the "work item" recited in Claim 1 and note that the Examiner apparently continues to apply the RFS disclosed in *Northcutt* against both of these claim limitations. Applicants maintain that the RFS itself cannot be used against both of these claim limitations.

In Claim 1 the "work item" is an electronic, physical thing that is "created" in response to receiving the work information associated with at least one message that the dispatcher has determined to be associated with a work assignment. In the previous Response, Applicants amended Claim 1 in an attempt to make this more clear. Therefore, the work assignment exists [and is associated with a message] even before a physical work item is created based on work information. Applicants ask the Examiner: How can the RFS be both the "work assignment" and the "work item" when the work item in Claim 1 is not even created until work information associated with at least one message that the dispatcher has determined to be associated with a work assignment has been received by the active work server from the dispatcher?

Moreover, the work item recited in Claim 1 is clearly distinguishable from the RFS in

*Northcutt*. The RFS is not an electronic, physical thing automatically created “in response to receiving the work information associated with at least one message determined automatically by the dispatcher to be associated with a work assignment” and is not created “based at least in part upon the work information associated with at least one message determined by the dispatcher to be associated with a work assignment,” as recited in Claim 1. Applicants respectfully submit that the Examiner’s equation of *Northcutt*’s RFS and Applicants’ work item is improper.

As another example, at least because *Northcutt* fails to disclose, teach, or suggest the work item recited in Claim 1, *Northcutt* necessarily fails to disclose, teach, or suggest an active work server that is operable to “automatically communicate the work item to an owner associated with the owner identifier,” as recited in Claim 1.

As another example, the Examiner correctly acknowledges that *Northcutt* fails to teach a dispatcher operable to “determine if any of the plurality of messages is associated with a work assignment,” as recited in Claim 1. (Final Office Action at 13) However, the Examiner argues the following:

It is old and well-known in the art to ‘determine if any of a plurality of messages is associated with a work assignment.’ The advantage of this feature is that it enables the proper organization of information in that the appropriate personnel are associated with the appropriate information. It would have been obvious, at the time of the invention, to one of ordinary skill in the art to combine the feature to ‘determine if any of the plurality of messages is associated with a work assignment’ with the *Northcutt et al.* system in order to facilitate the proper management of information, which is a goal of *Northcutt et al.* (see ¶ 2).

(Final Office Action at 13)

Applicants maintain that the Examiner provides no evidence for the Examiner’s assertion that “[i]t is old and well-known in the art to ‘determine if any of a plurality of messages is associated with a work assignment.’” (Final Office Action at 13) Applicants have repeatedly requested if “common knowledge” or “well known” art is being relied on to modify the reference, or if Official Notice is being taken, the Examiner provide a reference in

support of this position pursuant to M.P.E.P. ch. 2144.03. Applicants also requested that if personal knowledge is being relied on to supply the required motivation or suggestion to modify *Northcutt*, the Examiner provide an affidavit supporting such facts pursuant to M.P.E.P. ch. 2144.03.

In the previous Office Action, the Examiner cited M.P.E.P. ch. 2144.03(C) and stated the following:

Applicant has not 'specifically point[ed] out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art.' Applicant's broad request for references to support the Examiner's statements of Official Notice amounts to nothing more than an unsupported challenge. For these reasons, "determine if any of a plurality of messages is associated with a work assignment" is taken to be admitted prior art because Applicant's traversal was inadequate.

(Previous Office Action at 5) Applicants responded in the following manner.

First, Applicants respectfully disagree that their traversal of the Examiner's taking of Official Notice was inadequate and certainly do not admit that the limitation "determine if any of a plurality of messages is associated with a work assignment" is prior art.<sup>3</sup> According to the M.P.E.P., "the notice of facts beyond the record which may be taken by the examiner must be 'capable of such instant and unquestionable demonstration as to defy dispute.'" M.P.E.P. ch. 2144.03(A) (Rev. 1, Feb. 2003). The M.P.E.P. continues:

It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art.

*Id.* (emphasis in original). Furthermore, "[i]f such notice is taken, the basis for such reasoning must be set forth explicitly. The examiner must provide specific factual findings

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<sup>3</sup> Applicants note that the case cited in the M.P.E.P. as allegedly supporting the requirement that applicants state why the noticed fact is not considered to be common knowledge or well-known in the art actually does not support such a requirement. See M.P.E.P. ch. 2144.03(C) citing *Chevenard*, 139 F.2d at 713, 60 U.S.P.Q. at 241. Rather, the Court stated, "In the absence of anything in the record to contradict the examiner's holding, *and in the absence of any demand by appellant for the examiner to produce authority for his statement*, we will not consider this contention." *In re Chevenard*, 139 F.2d 711, 713, 60 U.S.P.Q. 239, 241 (C.C.P.A. 1943) Applicants clearly made such a demand in this case.

predicated on sound technical and scientific reasoning to support his or her conclusion of common knowledge.” M.P.E.P. ch. 2144.03(B) (Rev. 1, Feb. 2003). The M.P.E.P. also states that, “[i]f applicant adequately traverses the examiner’s assertion of official notice, the examiner must provide documentary evidence in the next Office action if the rejection is to be maintained.” M.P.E.P. ch. 2144.03(C) (Rev. 1, Feb. 2003).

Applicants respectfully submit that the Examiner cannot properly take Official Notice that a dispatcher operable to “determine if any of the plurality of messages is associated with a work assignment,” as recited in Claim 1 is “old and well known.” Applicants note that the Examiner has asserted that these limitations were old and well known at the time of invention without “provid[ing] specific factual findings predicated on sound technical and scientific reasoning to support [the Examiner’s] conclusion of common knowledge,” as the M.P.E.P. requires. In addition, the Examiner’s assertion that the above limitations were old and well known at the time of invention is hardly “capable of such instant and unquestionable demonstration as to defy dispute,” as the M.P.E.P. further requires. Accordingly, Applicants respectfully submit that the Examiner has improperly taken Official Notice that the above limitations were old and well known at the time of invention and respectfully requests that the Examiner withdraw the rejection of the independent claims. If the Examiner intends to maintain this rejection, Applicants again respectfully request that the Examiner at least provide documentary evidence that the above limitations were old and well known at the time of invention, as the Examiner asserts. Moreover, Applicants have not made a “broad request for references,” as asserted by the Examiner. Instead, Applicants have made a specific request for evidence that the specific limitation identified by the Examiner as being old and well known is actually old and well known.

In the Final Office Action, the Examiner maintains that Applicants have not adequately traversed the taking of Official Notice and states that Applicants’ arguments on this point are moot because the Examiner has already concluded that the limitations are taken as admitted prior art. (Final Office Action at 4) Applicants have already documented at length their disagreement with the Examiner on this issue. Applicants understand that the Examiner and Applicants do not agree on this point, and Applicants preserve this argument



for Appeal, if necessary.

Applicants respectfully maintain that the Examiner has not provided an adequate reason to modify *Northcutt* in the manner proposed by the Examiner. Applicants reiterate those points made in prior Responses and also provide the additional comments.

The Examiner states that *Northcutt* “sets to solve the problem of properly managing information (see *Northcutt* paragraph 2), thereby providing the requisite motivation to modify *Northcutt* in a manner to facilitate the proper management of information.” (Final Office Action at 5) First, paragraph 2 of *Northcutt* actually states the importance of resource management and discusses workflow management and information technology tasks, rather than some broad “information management” problem. Second, it is not even clear why a goal of information management would lead one of ordinary skill in the art at the time of Applicants’ invention to modify the system disclosed in *Northcutt* to determine if any of the plurality of messages is associated with a work assignment, as asserted by the Examiner.

The Examiner acknowledges that he has proposed an alleged advantage of modifying *Northcutt* (an advantage which Applicants do not admit could even be achieved by modifying *Northcutt* in the manner the Examiner proposes). (Final Office Action at 6) The alleged advantage cited by the Examiner (facilitating proper management of information) does not provide an explanation as to: (1) why it would have been obvious to one of ordinary skill in the art at the time of Applicants’ invention to modify the particular techniques disclosed in *Northcutt* to include a decision regarding “determining if any of the plurality of messages is associated with a work assignment;” and (2) how one of ordinary skill in the art at the time of Applicants’ invention would have made such a modification to *Northcutt*. Indeed, it does not even appear that there would be any reason for making such a determination in the system of *Northcutt*. There is certainly no reason to assume (even accepting for the sake of argument the Examiner’s position that it is a goal of *Northcutt* to “facilitate the proper management of information”) that one of ordinary skill in the art at the time of Applicants’ invention would have been motivated to incorporate any such determination into the system disclosed in *Northcutt* as the Examiner proposes.

As Applicants pointed out in the Previous Response, “it does not even appear that there would be any reason for making such a determination in the system of *Northcutt*.” For example, assume for the sake of argument only (and not by way of concession) that the Examiner is correct that *Northcutt* discloses a dispatcher that is operable to receive a plurality of messages (Final Office Action at 11, stating that the user in *Northcutt* submits a request for service (RFS) in the form of a message) and that an RFS states an actual task that needs to be performed. There would simply be no reason to modify the system of *Northcutt* to include making a determination as to whether any of the plurality of messages (RFSs) is associated with a work assignment because presumably all of the RFSs would be associated with work assignments. It is unclear why the alleged motivation of “information management” would lead one of ordinary skill in the art at the time of Applicants’ invention to incorporate “a dispatcher operable to . . . determine if any of the plurality of messages is associated with a work assignment” into the system of *Northcutt*. In other words, it is not clear how the alleged advantage of “information management” would even be achieved by modifying the system of *Northcutt* to include such as dispatcher.

To the extent that the Examiner is arguing that one of ordinary skill in the art at the time of Applicants’ invention *could have* modified *Northcutt* to include a dispatcher operable to “determine if any of the plurality of messages is associated with a work assignment, Applicants note that the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. See M.P.E.P. ch. 2143.01(III) (emphasis added); see also *In re Mills*, 916 F.2d 680, 16 U.S.P.Q.2d 1430 (Fed. Cir. 1990). Most recently, the requirement to show some reason why the modification would have been obvious has been reaffirmed in an official USPTO memorandum dated May 3, 2007 wherein the Deputy Commissioner for Patent Operations pointed to sections of *KSR v. Teleflex*, which recite, “it will be necessary . . . to determine whether there was an *apparent reason* to combine the known elements in the fashion claimed by the patent at issue.”<sup>4</sup> Applicants submit that the statements made by the Examiner do not provide a supported explanation as to: (1) why it would have been obvious

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<sup>4</sup> *KSR Int’l. Co v. Teleflex Inc.*, 550 U.S. \_\_\_, 82 U.S.P.Q.2d 1384 (2007) (emphasis added).

to one of ordinary skill in the art at the time of Applicants' invention (*without using Applicants' claims as a guide*) to modify *Northcutt* in the manner proposed by the Examiner; and (2) how one of ordinary skill in the art at the time of Applicants' invention would have actually done so.

Applicants respectfully submit that the Examiner's attempt to modify *Northcutt* appears to constitute the type of impermissible hindsight reconstruction of Applicants' claims, using Applicants' claims as a blueprint, that is specifically prohibited by the M.P.E.P. and governing Federal Circuit cases.

Accordingly, since the Examiner has not adequately provided the required teaching, suggestion, or motivation to modify *Northcutt* in the manner the Examiner proposes, Applicants respectfully submit that the Examiner's conclusions set forth in the Office Action do not meet the requirements set forth in the M.P.E.P. and the governing Federal Circuit case law for demonstrating a *prima facie* case of obviousness. Applicants respectfully submit that the rejection must therefore be withdrawn.

Moreover, at least because *Northcutt* fails to disclose, teach, or suggest a dispatcher operable to "determine if any of the plurality of messages is associated with a work assignment," as recited in Claim 1, *Northcutt* necessarily fails to disclose, teach, or suggest an active work server operable to "receive work information associated with at least one message *determined by the dispatcher to be associated with a work assignment*," "create, in response to receiving the work information associated with at least one message determined by the dispatcher to be associated with a work assignment, a work item associated with the at least one message [*determined by the dispatcher to be associated with a work assignment*]" based at least in part upon the work information associated with at least one message determined by the dispatcher to be associated with a work assignment, wherein the work item comprises an owner identifier," and "communicate the work item [*associated with the at least one message determined by the dispatcher to be associated with a work assignment*]" to an owner associated with the owner identifier," as recited in Claim 1.

For at least these reasons, Applicants respectfully request reconsideration and allowance of independent Claim 1 and its dependent claims. For at least certain analogous reasons, Applicants respectfully request reconsideration and allowance of independent Claim 24 and its dependent claims.

**B. Discussion of Certain Dependent Claims**

Dependent Claims 2-11 and 25-34 depend from independent Claims 1 and 24, respectively, which Applicants have shown above to be clearly allowable over *Northcutt* (even in light of the Examiner's proposed modifications to *Northcutt*). Thus, dependent Claims 2-11 and 25-34 are allowable at least because of they depend from allowable independent claims. Additionally, dependent Claims 2-11 and 25-34 recite further patentable distinctions over *Northcutt*.

As a first example, dependent Claim 10 recites, "The system of Claim 8, wherein the work item further comprises a first link to at least one of the evaluation, the recording, and the survey." To the extent that *Northcutt* discloses any "work item" as recited in Applicants' claims (and Applicants do not concede that it does), nowhere does *Northcutt* disclose, teach, or suggest that the work item "comprises a first link to at least one of the evaluation, the recording, and the survey," as recited in Claim 10. The portion of *Northcutt* cited by the Examiner in rejecting Claim 10 merely discloses that a link is communicated to the owner of an RFS and to the submitter of the RFS, but fails to disclose, teach, or suggest that this link is "to at least one of the evaluation, the recording, and the survey," as recited in Claim 10.

Moreover, Applicants respectfully submit that the Examiner's attempt to dismiss certain of the limitations recited in Claim 10 is improper. One of the three basic criteria that must be established by an Examiner to establish a *prima facie* case of obviousness is that "the prior art reference (or references when combined) must teach or suggest ***all the claim limitations***." See M.P.E.P. ch. 706.02(j) citing *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991) (emphasis added). "***All words*** in a claim must be considered in judging the patentability of that claim against the prior art." See M.P.E.P. ch. 2143.03 citing *In re Wilson*, 424 F.2d 1382, 1385 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970) (emphasis added).

*Northcutt* clearly fails to disclose, teach, or suggest a work item that “comprises a first link to **at least one of the evaluation, the recording, and the survey**,” as recited in Claim 10.

The Examiner argues that *Northcutt* teaches a work item that “comprises a first link to the received message,” citing paragraphs 66 and 68 of *Northcutt*. (Final Office Action at 15) The Examiner acknowledges that *Northcutt* does not teach the specific data to which the links refer in Claim 10 (*i.e.*, at least one of the evaluation, the recording, and the survey); however, the Examiner argues that these limitations only recite non-functional descriptive material and are not functionally involved in the steps recited, nor do they alter the recited structural elements. (Final Office Action at 7)<sup>5</sup> Applicants respectfully disagree.

Applicants respectfully submit that the Examiner's attempt to dismiss these acknowledged distinctions between Claim 10 and *Northcutt* as non-functional descriptive material is improper. Claim 10 positively recites that “the work item further comprises a first link to at least one of the evaluation, the recording, and the survey.” This link in Claim 10 distinguishes a work item that does not include a link to at least one of the evaluation, the recording, and the survey. These limitations are not merely a printed matter.<sup>6</sup> The very case cited by the Examiner, (*see* Office Action, Page 7), supports this position. *See In re Lowry*, 32 F.3d 1579, 1583, 32 U.S.P.Q.2d 1031, 1034 (Fed. Cir. 1994) (stating that “the printed matter cases have no factual relevance where the invention as defined by the claims requires that the information be processed not by the mind but by a machine, the computer).

Moreover, assuming for the sake of argument that *Northcutt* discloses a work item that comprises a link (which Applicants do not concede), the link purportedly disclosed in *Northcutt* is not a link to “at least one of the evaluation, the recording, and the survey.”

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<sup>5</sup> The Examiner *again* refers to “the recited method steps.” (Final Office Action at 7) Applicants *again* point out that Claims 1-18 are explicitly directed to a system. The system comprises certain elements that are operable to perform certain functionality. Claims 1-18 are not method claims, and the limitations recited in those claims are not method steps.

<sup>6</sup> In response to the Examiner's “confusion” over the printed matter reference in Applicants' previous Response, Applicants respectfully note that the Examiner's citation to *In re Gulack* in his rejection implicates the “printed matter rejections.” “Printed matter rejection” is a commonly used term to refer to rejections based on “nonfunctional descriptive material,” since the primary examples of such nonfunctional descriptive material are music, literature, art, photographs, and mere arrangements or compilations of facts or data. *See* M.P.E.P. ch. 2106.01.

Indeed, the cited portions of *Northcutt* fails to disclose any evaluation, recording, or survey. A link to *X* is clearly distinguishable from a link to *Y*. To establish a *prima facie* case of obviousness, “the prior art reference (or references when combined) must teach or suggest ***all the claim limitations***.” See M.P.E.P. ch. 706.02(j) citing *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991) (emphasis added).

The Final Office Action again cites *In re Gulack* and *In re Lowry* as support for the Examiner’s position. Although Applicants do not agree that the above-discussed distinctions constitute nonfunctional descriptive material, one of the very decisions cited by the Examiner states, “Differences between an invention and the prior art cited against it cannot be ignored merely because those differences reside in the content of printed matter [i.e., nonfunctional descriptive material]. Under section 103, the board cannot dissect a claim, excise the printed matter from it, and declare the remaining portion of the mutilated claim to be unpatentable.” *In re Gulack*, 703 F.2d 1381, 1385, 217 U.S.P.Q. 401, 403 (Fed. Cir. 1983). Applicants respectfully submit that the Examiner has performed such an improper dissection of Applicants’ claims in this case.

Moreover, *In re Lowry* provides additional support that all of the limitations recited in Applicants’ claims are entitled to patentable weight. The court in *In re Lowry* held that claims directed to data structures stored in a memory define functional characteristics of the memory. *In re Lowry*, 32 F.3d 1579, 1583, 32 U.S.P.Q.2d 1031, 1034 (Fed. Cir. 1994) The link recited in Claim 10 defines a functional relationship to the linked item (e.g., at least one of an evaluation, a recording, and a survey) that allow a user to access the linked item from the work item.

Applicants note that both decisions cited by the Examiner held that the Board of Patent Appeals & Interferences improperly ignored limitations recited in the applicant’s claims. See *In re Gulack*, 703 F.2d at 1387, 217 U.S.P.Q. at 405; *In re Lowry*, 32 F.3d at 1584-85. Respectfully, the Examiner makes the same mistake with respect to certain limitations recited in Applicants’ claims.

For at least these reasons, Applicants respectfully request reconsideration and allowance of dependent Claim 10 and its dependent claims. For at least certain analogous reasons, Applicants respectfully request reconsideration and allowance of dependent Claim 33 and its dependent claims.

As a second example, dependent Claim 11 recites, "The system of Claim 10, wherein the work item further comprises a second link to at least one application used to perform the work assignment." First, Claim 11 depends from Claim 10, which Applicants have shown above to be allowable, and is allowable for at least this reason. Second, to the extent that *Northcutt* discloses any "work item" as recited in Applicants' claims (and Applicants do not concede that it does), nowhere does *Northcutt* disclose, teach, or suggest that the work item "comprises a second link to at least one application used to perform the work assignment," as recited in Claim 11. According to the Examiner, *Northcutt* discloses that "users are provided with an interface enabling them to link to resources and tools to perform modifications or additions to the work assignment." (Final Office Action at 8 citing *Northcutt*, ¶¶ 60-63)

Assuming for the sake of argument that the Examiner's characterization of *Northcutt* is accurate, an interface enabling users to link to resources and tools to perform ***modifications or additions to the work assignment*** (as allegedly disclosed in *Northcutt*) is distinguishable from a link to at least one application used to ***perform*** the work assignment," as recited in Claim 11. According to the Examiner, *Northcutt* "teaches that the second link takes a user to information for instruction and information," citing paragraphs 60-63. (Final Office Action at 8) Even if the Examiner's statement is true, Claim 11 recites that the work item comprises a second link to at least one ***application used to perform*** the work assignment. Instruction and information do not disclose, teach, or suggest ***an application***, let alone ***an application used to perform the work assignment***. Moreover, the cited portions do not appear to disclose, teach, or suggest that any of the instruction or information is used to actually ***perform*** any work assignment.

Applicants maintain that the discussion at paragraphs 60-63 of *Northcutt* relates to an interface through which a user can manually create a report. *See* ¶ 60, lines 1-3. The cited

portion of *Northcutt* does not discuss a work item created by an active work server, as recited in Claim 1 (from which Claim 8 depends), much less a created work item that “comprises a second link to at least one application used to perform the work assignment,” as recited in Claim 11.

For at least these reasons, Applicants respectfully request reconsideration and allowance of dependent Claim 11 and its dependent claims. For at least certain analogous reasons, Applicants respectfully request reconsideration and allowance of dependent Claim 34 and its dependent claims.

At least certain of the additional dependent claims also recite further patentable distinctions over *Northcutt*. To avoid burdening the record and in view of the clear allowability of independent Claims 1 and 24, Applicants do not specifically discuss these distinctions in this Response. However, Applicants reserve the right to discuss these distinctions in a future Response or on Appeal, if appropriate.

For at least these reasons, Applicants respectfully request reconsideration and allowance of dependent Claims 2-11 and 25-34.

**C. Independent Claim 38 is Allowable over *Northcutt***

The Examiner rejects Claim 38 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2003/0126001 by Northcutt et al. (“*Northcutt*”). Applicants respectfully traverse this rejection.

Applicants maintain that *Northcutt* is unrelated a call center environment. The Examiner dismisses this distinction as an intended use. Applicants respectfully disagree. For example, Claim 38 recites that the plurality of messages received by the dispatcher “each compris[es] a session summary associated with a session between a call center representative of the call center and a caller to the call center.” As another example, Claim 38 recites that “a work assignment compris[es] one or more of completing an evaluation of a session, reviewing a recording associated with a session, and reviewing a survey associated with a



session.” These are positively-recited limitations that distinguish Applicants’ claims from the references cited by the Examiner.

Applicants maintain that *Northcutt* does not disclose, teach, or suggest a dispatcher operable to “receive a plurality of messages each comprising a session summary associated with a session between a call center representative of the call center and a caller to the call center” and to “automatically determine if any of the plurality of messages is associated with a work assignment, a work assignment comprising one or more of completing an evaluation of a session, reviewing a recording associated with a session, and reviewing a survey associated with a session,” as recited in Claim 38.

Applicants also maintain that, for at least certain reasons analogous to those discussed above with reference to independent Claim 1, *Northcutt* fails to disclose, teach, or suggest an active work server that is operable to: “receive work information associated with at least one message determined automatically by the dispatcher to be associated with a work assignment;” “automatically create a work item associated with the at least one message based at least in part upon the work information, wherein the work item comprises an owner identifier;” and “automatically communicate the work item to an owner associated with the owner identifier for performance of the work assignment associated with the work item.”

For at least these reasons, Applicants respectfully request consideration and allowance of independent Claim 38.

**D. Dependent Claims 12-18 and 35-37 are Allowable over the Proposed *Northcutt-Ouchi* Combination**

The Examiner rejects Claims 12-18 and 35-37 under 35 U.S.C. § 103(a) as being unpatentable over *Northcutt* in view of U.S. Patent Application Publication No. 2003/0023675 by Ouchi et al. (“*Ouchi*”). Applicants respectfully disagree.

Dependent Claims 12-18 and 35-37 depend from independent Claims 1 and 24, respectively, which Applicants have shown above to be clearly allowable over *Northcutt*

(even in light of the Examiner's proposed modifications to *Northcutt*). *Ouchi* fails to make up for at least the deficiencies of *Northcutt* discussed above. Thus, dependent Claims 12-18 and 35-37 are allowable at least because of they depend from allowable independent claims. Additionally, dependent Claims 12-18 and 35-37 recite further patentable distinctions over the proposed *Northcutt-Ouchi* combination.

As just one example, dependent Claim 12 recites:

The system of Claim 11, further comprising a collaboration server having a plurality of work folders associated with a plurality of owners and operable to:

retrieve at least one of the evaluation, the recording, or the survey based on the first link; and

launch at least one application based upon the second link.

The proposed *Northcutt-Ouchi* combination fails to disclose, teach, or suggest various limitations recited in Claim 12.<sup>7</sup>

Applicants maintain that the proposed *Northcutt-Ouchi* combination fails to disclose, teach, or suggest all of the limitations recited in Claim 12. One of the three basic criteria that must be established by an Examiner to establish a *prima facie* case of obviousness is that "the prior art reference (or references when combined) must teach or suggest ***all the claim limitations***." See M.P.E.P. ch. 706.02(j) citing *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991) (emphasis added). "***All words*** in a claim must be considered in judging the patentability of that claim against the prior art." See M.P.E.P. ch. 2143.03 citing *In re Wilson*, 424 F.2d 1382, 1385 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970) (emphasis added).

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<sup>7</sup> Applicants maintain that, in rejecting Claim 12, the Examiner appears to read limitations from Applicants' Specification into the claims. (See, e.g., Final Office Action at 9-10, 17) It appears to Applicants that the Examiner specifically limits the claim limitation "collaboration server" to the example embodiment described in the Specification (see Specification, Page 10). Applicants respectfully submit that it is improper to limit Applicants' claims to the specific example embodiments described in the Specification. See, e.g., *Phillips v. AWH Corp.*, 415 F.3d 1303, 1323-24, 75 U.S.P.Q.2d 1321, 1334-35 (Fed. Cir. 2005). Claim terms should be construed according to their ordinary and customary meaning. In other words, the Examiner is not simply interpreting the limitation "collaboration server" in light of the Specification; the Examiner is specifically limiting the claim term to the example described in the Specification rather than construing the claim term according to its ordinary and customary meaning in light of the Specification.

The Examiner refers to the rejection of Claim 10 (which is based solely on *Northcutt*) as the basis for the disclosure of “retriev[ing] at least one of the evaluation, the recording, or the survey based on the first link [the work item comprising the first link and the first link being to at least one of the evaluation, the recording, and the survey],” as recited in Claim 12. (Office Action, Page 9) As discussed above with respect to Claim 10, *Northcutt* fails to disclose, teach, or suggest a work item that comprises a first link to at least one of the evaluation, the recording, and the survey, and the Examiner improperly dismisses certain of these limitations as non-functional, descriptive material. Moreover, Claim 12 specifically recites that a collaboration server is operable to *retrieve* at least one of the evaluation, the recording, or the survey based on the first link. *Northcutt* does not disclose, teach, or suggest *retrieving* at least one of the evaluation, the recording, or the survey based on the first link. The Examiner does not allege that *Ouchi* makes up for this deficiency of *Northcutt*.

As another example, the proposed *Northcutt-Ouchi* combination fails to disclose, teach, or suggest “launch[ing] at least one application based upon the second link [the work item comprising the second link and the second link being to at least one application used to perform the work assignment],” as recited in Claim 12. As discussed above with respect to Claim 11, *Northcutt* fails to disclose, teach, or suggest a work item that comprises a second link to at least one application used to perform the work assignment. Therefore, Applicants respectfully submit that *Northcutt* necessarily fails to disclose, teach, or suggest a collaboration server that is operable to “launch at least one application based upon the second link,” as recited in Claim 12. The Examiner does not allege that *Ouchi* makes up for this deficiency of *Northcutt*.

Additionally, Applicants do not admit that the proposed *Northcutt-Ouchi* combination is even possible or that the Examiner has shown the requisite teaching, suggestion, or motivation in the cited references or in the knowledge generally available to one of ordinary skill in the art at the time of invention to combine or modify these references in the manner the Examiner proposes.

For at least these reasons, Applicants respectfully request reconsideration and allowance of dependent Claim 12 and its dependent claims.

At least certain of the additional dependent claims also recite further patentable distinctions over the proposed *Northcutt-Ouchi* combination. To avoid burdening the record and in view of the clear allowability of independent Claims 1 and 24, Applicants do not specifically discuss these distinctions in this Response. However, Applicants reserve the right to discuss these distinctions in a future Response or on Appeal, if appropriate. Additionally, Applicants do not admit that the proposed *Northcutt-Ouchi* combination is even possible or that the Examiner has shown the requisite teaching, suggestion, or motivation in the cited references or in the knowledge generally available to one of ordinary skill in the art at the time of invention to combine or modify these references in the manner the Examiner proposes.

For at least these reasons, Applicants respectfully request reconsideration and allowance of dependent Claims 12-18 and 35-37.

### **III. No Waiver**

All of Applicants' arguments and amendments are without prejudice or disclaimer. Additionally, Applicants have merely discussed example distinctions from the reference cited by the Examiner. Other distinctions may exist, and Applicants reserve the right to discuss these additional distinctions in a later Response or on Appeal, if appropriate. By not responding to additional statements made by the Examiner, Applicants do not acquiesce to the Examiner's additional statements. The example distinctions discussed by Applicants are sufficient to overcome the Examiner's rejections.

**Conclusion**

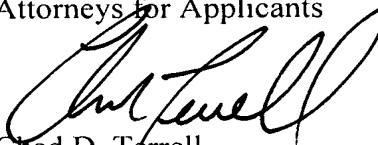
Applicants have made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, Applicants respectfully request full allowance of all pending claims.

If the Examiner feels that a telephone conference would advance prosecution of this Application in any manner, the Examiner is invited to contact Chad D. Terrell, Attorney for Applicants, at the Examiner's convenience at (214) 953-6813.

As indicated on the accompanying RCE Transmittal form, the Commissioner is hereby authorized to charge the amount of \$810.00 to Deposit Account No. 02-0384 of Baker Botts L.L.P. to cover the cost of the RCE fee. Although Applicants believe no other fees are due, the Commissioner is hereby authorized to charge any additional fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.  
Attorneys for Applicants



Chad D. Terrell  
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Date: October 31, 2007

**CORRESPONDENCE ADDRESS:**

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